

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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MARISOL JAVIER, as the Mother and Natural Guardian of
ANGEL JAVIER, an infant under the age of fourteen (14) years
and MARISOL JAVIER, Individually,

Index No.:
25643/2015(E)
Date issued:
10/13/2015

Plaintiff,

-against-

VERIFIED ANSWER

HYDE LEADERSHIP CHARTER SCHOOL, PETER ANDERSON,
JANE DOE TEACHER AND NEW YORK DEPARTMENT OF
EDUCATION,

Defendant(s).

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Defendants **HYDE LEADERSHIP CHARTER SCHOOL, PETER ANDERSON, and
JANE DOE TEACHER** by and through their attorneys CORNELL GRACE, P.C., for their
Verified Answer to Plaintiff's Verified Complaint, respond as follows:

1. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "1" of the Verified Complaint.
2. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "2" of the Verified Complaint.
3. Admit the allegations contained in paragraph "3" of the Verified Complaint.
4. Upon information and belief, deny each and every allegation contained in paragraph "4" of the Verified Complaint, except admit that Hyde Leadership Charter School (hereinafter referred to as "Hyde") entered into a charter with reference to services that were to be provided to students at the premises and refer to the charter for its terms and conditions and refer all questions of law to the Court.

5. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "5" of the Verified Complaint.

6. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "6" of the Verified Complaint.

7. Deny each and every allegation contained in paragraph "7" of the Verified Complaint, except admit that a document purporting to be a Notice of Claim was received and, to date, the matter has not been resolved.

8. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "8" of the Verified Complaint and refer all questions of law to the Court.

9. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "9" of the Verified Complaint, except admit that to date, the matter has not been resolved.

10. Upon information and belief, deny each and every allegations contained in paragraph "10" of the Verified Complaint, except admit that Hyde entered into a charter with reference to services that were to be provided to students at the premises and refer to the charter for its terms and conditions and refer all questions of law to the Court.

11. Upon information and belief, deny each and every allegations contained in paragraph "11" of the Verified Complaint, except admit that Hyde entered into a charter with reference to services that were to be provided to students at the premises and refer to the charter for its terms and conditions and refer all questions of law to the Court.

12. Upon information and belief, deny each and every allegations contained in paragraph "12" of the Verified Complaint, except admit that Hyde entered into a charter

with reference to services that were to be provided to students at the premises and refer to the charter for its terms and conditions and refer all questions of law to the Court.

13. Upon information and belief, admit the allegations contained in paragraph "13" of the Verified Complaint.

14. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "14" of the Verified Complaint.

15. Upon information and belief, admit the allegations contained in paragraph "15" of the Verified Complaint.

16. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "16" of the Verified Complaint.

17. Upon information and belief, deny each and every allegations contained in paragraph "17" of the Verified Complaint, except admit that Hyde entered into a charter with reference to services that were to be provided to students at the premises and refer to the charter for its terms and conditions and refer all questions of law to the Court.

18. Upon information and belief, deny each and every allegations contained in paragraph "18" of the Verified Complaint, except admit that Hyde entered into a charter with reference to services that were to be provided to students at the premises and refer to the charter for its terms and conditions and refer all questions of law to the Court.

19. Upon information and belief, deny each and every allegations contained in paragraph "19" of the Verified Complaint, except admit that Hyde entered into a charter with reference to services that were to be provided to students at the premises and refer to the charter for its terms and conditions and refer all questions of law to the Court.

AS AND FOR A FIRST CAUSE OF ACTION IN FAVOR OF
PLAINTIFFS AND AGAINST DEFENDANTS

20. These answering Defendants repeat, reiterate, and reallege each and every denial to each and every allegation in the Verified Complaint which is realleged in paragraphs "1" through "19" thereof as herein denied.

21. Upon information and belief, admit the allegations contained in paragraph "21" of the Verified Complaint.

22. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "22" of the Verified Complaint.

23. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "23" of the Verified Complaint.

24. Upon information and belief, deny each and every allegation contained in paragraph "24" of the Verified Complaint.

25. Upon information and belief, deny each and every allegation contained in paragraph "25" of the Verified Complaint.

26. Upon information and belief, deny each and every allegations contained in paragraph "26" of the Verified Complaint, except admit that Hyde entered into a charter with reference to services that were to be provided to students at the premises and refer to the charter for its terms and conditions and refer all questions of law to the Court.

27. Upon information and belief, deny each and every allegation contained in paragraph "27" of the Verified Complaint.

28. Upon information and belief, deny each and every allegation contained in paragraph "28" of the Verified Complaint.

29. Upon information and belief, deny each and every allegation contained in paragraph "29" of the Verified Complaint.

30. Upon information and belief, deny each and every allegation contained in paragraph "30" of the Verified Complaint.

31. Upon information and belief, deny each and every allegation contained in paragraph "31" of the Verified Complaint.

32. Upon information and belief, deny each and every allegation contained in paragraph "32" of the Verified Complaint.

33. Upon information and belief, deny each and every allegation contained in paragraph "33" of the Verified Complaint.

34. Upon information and belief, deny each and every allegation contained in paragraph "34" of the Verified Complaint.

35. Upon information and belief, deny each and every allegation contained in paragraph "35" of the Verified Complaint.

36. Upon information and belief, deny each and every allegation contained in paragraph "36" of the Verified Complaint.

37. Upon information and belief, deny each and every allegation contained in paragraph "37" of the Verified Complaint.

38. Upon information and belief, deny each and every allegation contained in paragraph "38" of the Verified Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

39. Plaintiffs failed to set forth facts sufficient to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

40. The culpable conduct of the plaintiffs brought about the alleged damages and injuries which plaintiff claims without any culpable conduct on the part of these answering Defendants, its agents, servants, or employees, but if the Court finds after trial that any culpable conduct of these answering Defendants, its agents, servants, or employees contributed to the alleged damages or injuries to the plaintiffs, then and in that event these answering Defendants pray that the amount of damages which might be recoverable shall be diminished in the proportion which the culpable conduct attributed to the plaintiff bear the culpable conduct which caused the alleged damages or injuries.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

41. Upon information and belief, the plaintiffs' injuries and damages, if any, were caused by the intervening acts of third parties unrelated to this answering defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

42. In the event plaintiffs recover a verdict or judgment against this answering Defendant, then said verdict or judgment must be reduced pursuant to C.P.L.R. § 4545(c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify plaintiff, in whole or in part, from any past or future claims, economic loss, from any collateral source including but not limited to insurance, Social Security, worker's compensation or employee benefit programs.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

43. These answering Defendants claim no responsibility to plaintiff herein. However, to the extent that the trier of fact finds liability of fifty percent or less as defined by

Article 16 C.P.L.R., entitlement is claimed by these answering Defendants to the benefits set forth in that Article.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

44. In the event any person or entity liable or claimed to be liable for damages alleged in this action has been given or may hereafter be given a release or covenant not to sue, these answering Defendants will be entitled to protection under General Obligations Law § 15-108, and the corresponding reduction of any damages which may be determined to be due against these answering Defendants.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

45. Plaintiff's conduct was the sole proximate cause of the accident.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

46. The plaintiff failed or otherwise refused to mitigate plaintiff's alleged damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

47. These answering Defendants had no actual or constructive notice of the alleged the alleged dangerous condition as alleged in the Complaint.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

48. The injuries alleged to have been sustained by the plaintiff were sustained while plaintiff was in the incident and premises into which plaintiff had entered, knowing full well the hazard, and the inherent risk thereof, and knowing the dangers that such risks and hazards were expected and assumed by the plaintiff upon entering into and continuing in such incident and premises.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

49. Any actions of the third-party students referred to in the Complaint, and/or others, as alleged in the Complaint herein, were sudden, spontaneous, and unforeseeable.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

50. At no time did these Defendants know of facts that would lead a reasonable and prudent person to investigate the third-party students referred to in the Complaint, and/or others alleged in the Complaint before the allegations as alleged in the Complaint arose.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

51. These answering Defendants at all times acted in good faith and in lawful exercise of and discharge of their duties.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

52. The plaintiff was a voluntary participant in the activities that he herein alleges he injured him and assumed the risks known and inherent to that activity.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

53. There was no proximate causation between the cause of the accident and the actions and/or inactions on the part of these answering Defendants and were not foreseeable.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

54. The plaintiff commenced any and all altercations alleged in the Complaint.

AS AND FOR SEVENTEENTH AFFIRMATIVE DEFENSE

55. These answering Defendants at all times acted in good faith and in lawful exercise and discharge of their duties, and in accordance with established policies,

procedures, and guidelines, including teacher training programs to promote a positive school environment, free from bullying, harassment, assault, and/or discrimination, and with regard to the allegations contained in the Complaint, in and for its schools and employed a procedure for reporting such incidents to these answering Defendants.

AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE

56. Plaintiffs failed to avail themselves to the available complaint procedure established by the school.

WHEREFORE the Defendants, **HYDE LEADERSHIP CHARTER SCHOOL, PETER ANDERSON, and JANE DOE TEACHER**, demand judgment dismissing the Complaint and further demands that the culpable conduct of the plaintiffs be ascertained herein and that the amount of damages, if any, which may be recovered by the plaintiff shall be diminished in the proportion which plaintiff's culpable conduct bears to the culpable conduct which causes plaintiffs' alleged damages pursuant to C.P.L.R. § 1411, together with costs, disbursements, interest, and attorneys' fees in this action.

Dated: New York, New York
November 9, 2015

CORNELL GRACE, P.C.



Janet O'Connor Cornell

Attorney for Defendants

**HYDE LEADERSHIP CHARTER SCHOOL,
PETER ANDERSON, and JANE DOE
TEACHER**

111 Broadway-Suite 810
New York, New York 10006
(212) 233-1100

TO:

Joseph A. Maria, Esq.
Attorneys for Plaintiffs
301 Old Tarrytown Road
White Plains, New York 10603
(914) 684-0333
File No.: 01-2195

NEW YORK CITY DEPARTMENT OF EDUCATION
65 Court Street
Brooklyn, New York 12201

ATTORNEY'S VERIFICATION

Janet O'Connor Cornell, affirms under the penalties of perjury that she is an attorney associated with the firm of CORNELL GRACE, P.C., the attorneys for **HYDE LEADERSHIP CHARTER SCHOOLS, PETER ANDERSON, and JANE DOE TEACHER**, that she has read the foregoing Answer and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that, as to those matters, she believes them to be true.

The reason this verification is made by the undersigned rather than an officer of the answering defendants are that the undersigned maintains her law office outside the county of said defendant's principal place of business.

The sources of your affirmant's information and belief are from conversations had with employees of the answering defendant and from documents in the files.

Dated: New York, New York
November 9, 2015



Janet O'Connor Cornell

AFFIDAVIT OF SERVICE

I, **ANGELA TUSHNOVA**, being duly sworn, deposes and says that deponent is not a party to this action, is over 18 years of age and is presently employed by Cornell Grace, 111 Broadway, Suite 810, New York, New York 10006; that on November 9, 2015 deponent served the within: **VERIFIED ANSWER** upon the following attorney(s) for the parties at the addresses shown below, being the addresses designated by said attorneys for that purpose, by depositing a true copy of the same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

TO:

Joseph A. Maria, Esq.
Attorneys for Plaintiffs
301 Old Tarrytown Road
White Plains, New York 10603
(914) 684-0333
File No.: 01-2195

NEW YORK CITY DEPARTMENT OF EDUCATION
65 Court Street
Brooklyn, New York 12201



ANGELA TUSHNOVA

Sworn to on this the
9th day of November, 2015.



Notary Public

SAM BAHARVAR
NOTARY PUBLIC-STATE OF NEW YORK
No. 02BA6087868
Qualified in Nassau County
My Commission Expires April 10, 2015

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VERIFIED ANSWER

CORNELL GRACE, P.C.
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111 Broadway, Suite 810
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(212) 833-1110-f